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SIPDIS

STATE FOR EB/TPP/MTA/MST AND AF/W
STATE PASS USTR FOR GBLUE AND PCOLEMAN
STATE PASS DEPARTMENT OF ENERGY

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TAGS: ETRD ECON EINV EFIN NI
SUBJECT: NIGERIA: 2003 NATIONAL TRADE ESTIMATE DRAFT

REF: STATE 225281

¶1. Following is Post's draft of the 2003 National Trade Estimate for Nigeria. Dept. is requested to provide end-year trade and investment data in the trade summary.

¶2.
NIGERIA

TRADE SUMMARY
In 2002, the U.S. trade deficit with Nigeria was $X.X billion, an improvement over the 2001 deficit of $X.X billion. U.S. goods exports to Nigeria were $XXX million in 2002, an increase of XX.X percent from 2001. U.S. goods imports from Nigeria were $X.X billion in 2002, a decrease of almost XX.X percent from 2001. Nigeria was the United States' XXth largest export market in 2002.

In 2001, the stock of U.S. foreign direct investment in Nigeria was $X.X billion, an increase of about XX percent from 2000.

IMPORT POLICIES
Tariffs
Tariffs provide the Nigerian government with its second largest source of revenue after oil exports. In its last major tariff revision in March 2002, the Nigerian government cut duties on 123 tariff line items (mostly raw materials and capital equipment) to as low as 2.5 percent, while raising them on 62 line items (largely finished goods and agricultural commodities) to as high as 100 percent. The government announced similar cuts and increases--often on the same good from year-to-year--in 2000 and 2001. The government will likely announce another round of tariff adjustments as part of the 2003 budget process.

The arbitrary nature of Nigeria's tariffs and uneven collection of duties help make the import process difficult and expensive and create a severe bottleneck for commercial activities. The problem affects foreign investors, as well, and is aggravated by Nigeria's high-level of dependence on imported goods, both finished products and raw materials. High duties create the incentive to avoid tariff payments. Common illicit practices include under-invoicing imports, "round-tripping" foreign exchange, and smuggling. The gap between the official exchange rate for the naira (used for most imports) and the parallel market's discounted rate (between 5 and 20 percent during most of 2002, at 10 percent by year's end) accentuates the demand for foreign exchange and encourages corrupt practices that are difficult to eliminate. In general, most leading Nigerian importers of high tariff items successfully avoid payment of full tariffs.

Non-tariff trade barriers
Nigeria appears not to be fully compliant with its WTO obligations because of implementation of new non-tariff trade barriers. In 2002, the Nigerian Government imposed new non-tariff trade barriers on a number of goods, reversing a trend over recent years to eliminate such barriers. In March 2002, the government banned the import of vehicles over five years old; it also banned used refrigerators, air conditioners, and compressors. Textiles containing "hazardous chemicals such as chlorides" were banned early in 2002, and in September 2002, the government banned all imports of printed textiles sold in Nigeria as "African Prints." In August 2002 bans were placed on the import of sorghum, millet, wheat flour, cassava, frozen poultry, and vegetable oil in. Bans on imports of kaolin, gypsum, mosquito repellent coils, used clothing, and bagged cement also remain in effect.

Customs barriers

Nigeria's ports continue to be a major obstacle to imports. Importers face long clearance procedures, corruption, high berthing and unloading costs, and uncertain application of customs regulations. In 2001, the Nigeria Customs Service (NCS) began a 100 percent inspection regime at Nigerian ports to reduce smuggling and under-valuation of imports. The NCS continues to operate a pre-shipment inspection regime, in which contracted shipping inspection companies at the port of origin issue inspection reports that their counterparts in Nigeria use to create a Clean Report of Inspection for NCS, which lists the items shipped, their value, and applicable customs duties.

The NCS planned to launch a 100 percent destination inspection regime in 2002. Under that regime, the NCS would act as the sole entity conducting valuation at Nigerian ports of destination. Introduction was delayed after protests from importers who feared that without a pre-shipment inspection report NCS officials might use the new authority to extract additional unauthorized facilitation fees. NCS risk assessment and other databases are not yet fully operational, another reason for delay.

STANDARDS, TESTING, LABELING, AND CERTIFICATION
The combination of high import duties and uneven application of import and labeling regulations makes legal importation of high-value perishable products problematic. Disputes among Nigerian agencies over the interpretation of regulations often cause import delays. The frequent changes in customs guidelines help slow the movement of goods through the port of Lagos, resulting in product deterioration and significant losses for importers of perishables.
The National Agency for Food and Drug Administration and Control (NAFDAC), which is charged with protecting the Nigerian consumer from fraudulent or unhealthy products, has targeted for special attention the illicit importation of counterfeit and expired pharmaceuticals, particularly from the Far East and South Asia. However, NAFDAC has also on occasion challenged legitimate, processed food imports, including those from U.S. exporters. NAFDAC's severely limited institutional capacity to carry out inspection and testing contributes to an occasionally heavy-handed or arbitrary approach in regulatory enforcement.

Not only do products enter Nigeria without full payment of tariffs, many imports do not fulfill the country's health, labeling, and sanitary standards. Nigeria's rules concerning labeling, testing, and sanitary and phytosanitary standards are relatively well defined. Regardless of origin, all food, drug, cosmetic, and pesticide imports must be accompanied by a certificate of analysis from the manufacturer and appropriate national authority. Specified animal products, plants, seeds, and soils must possess sanitation certificates. U.S. exporters may obtain these certificates from the U.S. Department of Agriculture. By law, items entering Nigeria must be labeled exclusively in the metric system; products with dual or multi-markings will be refused entry. However, products not meeting these criteria can be found throughout Nigeria's markets. While U.S. products do not appear to be subject to extraordinary restrictions or regulations, the widespread use of fraudulent documentation by non-U.S. exporters can prejudice the access for U.S. exporters. When the level of illicit, undocumented imports for particular products such as frozen chicken exceed that of legal imports, meeting stipulated Nigerian standards does not necessarily ease access to the Nigerian market.

GOVERNMENT PROCUREMENT
The Obasanjo Administration has made modest progress on its pledge to practice open and competitive bidding and contracting for government procurement and privatization. The Nigerian Government has succeeded in reducing the most blatant forms of corruption, but it has been less successful in eradicating back-room maneuvers that bias decisions. Particularly in the initial stages of the tendering process, the Nigerian Government has demonstrated transparency, even-handedness, and, at times, even excessive meticulousness in weighing competitive bids. However, as tenders proceed through the decision-making system, the process often becomes more opaque. Allegations by unsuccessful bidders of corrupt behavior by senior government officials and foreign companies are common.

In January 2001, the Government issued new procurement and government contract policy guidelines. The guidelines clarify competitive tendering and decision-making procedures, define bid security and mobilization fee rules, and provide for audits of capital projects. However, it is alleged that to avoid this due diligence process some government agencies are tendering contracts the value of which is smaller than the threshold amount of one million naira (about $7,700).

Foreign companies incorporated in Nigeria receive national treatment, and government tenders are published in local newspapers. According to Nigerian Government sources, approximately five percent of all government procurement has been awarded to U.S. companies.

EXPORT SUBSIDIES

The Nigerian Export Promotion Council (NEPC) and the Nigerian Export-Import Bank (NEXIM) administer incentive programs for industrial exports that include a duty drawback program, an export development fund, tax relief, a capital assets depreciation allowance, and a foreign currency retention program. However, funding constraints limit the effectiveness of these programs. In addition, only favored individuals and businesses allegedly have derived any benefit from them. Aside from these limited incentive programs, Nigeria's non-oil export sector firms do not receive subsidies or other significant support from the government. Recognizing that Nigerian exporters were penalized by the official exchange rate, in late 2001 the government agreed to permit exporters to repatriate their earnings at an exchange rate slightly higher than the official rate, but lower than the parallel market rate. Nigeria imposes on foreign oil companies some of the stiffest restrictions and fee structures of any in effect in the oil producing countries in the world.

In an effort to attract investment in export-oriented industries, the Nigerian Government established the Nigerian Export Processing Zone Authority (NEPZA) in 1992. Of five zones established under NEPZA, only the Calabar and Bonny Island (Onne) Export Processing Zones function. NEPZA rules dictate that at least 75 percent of production in the zones must be exported, although lower export levels are reportedly being tolerated. In 2001, the Government converted the Calabar Export Processing Zone into a free trade zone; it is unclear whether the new designation will help to improve its export performance.

In March 2002, the Ministry of Finance established export incentives for agricultural cash crops. Cocoa, groundnuts, rubber, cotton, palm oil, gum arabic, and ginger are eligible for a five-percent export expansion grant. This program was not operational as of January 2003.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention (Lisbon Text). Legislation pending in the National Assembly would establish the legal framework for a TRIPS compliant IPR system in Nigeria. However, IPR law in force does, in principal, afford rightholders a degree of protection in compliance with most TRIPS provisions.

Following the advent of democracy in 1999, Nigerian artists--including writers, filmmaker, and musicians--have mounted a campaign calling for more effective copyright protection and amendment to existing law. Lawyers active in IPR issues formed the Industrial Property Law Interest Group (IPLIG) to educate the public and lobby on behalf of industrial IPR issues. IPLIG has sponsored several copyright conferences and initiated an IPR course at the Lagos Law School. Software company representatives continue to work directly with the Nigerian Government to reduce the number of agencies using pirated software. Nigerian filmmakers formed the Proteus Entertainment Agency to challenge copyright infringement and promote stronger copyright laws and law enforcement.

Despite Nigeria's active participation in these conventions, its reasonably comprehensive domestic IPR laws, and growing interest among individuals in seeing their intellectual property protected, piracy is rampant. Counterfeit pharmaceuticals, business and entertainment software, and music and video recordings, and other consumer goods are sold openly throughout the country.

The government's lack of institutional capacity to address IPR issues is a major constraint to enforcing IPR. The key Nigerian institutions suffer from low morale, poor training, and limited resources. Neither the Trademarks Office in the Ministry of Commerce nor the National Agency for Food and Drug Administration and Control, two agencies responsible for significant IPR protection, are computerized. Fraudulent alteration of IPR documentation is reportedly common, even in government offices.

Law enforcement, particularly for patents and trademarks,

remains weak, and the judicial process is slow and subject to corruption. Companies rarely seek trademark or patent protection because they generally perceive it as ineffective. Nonetheless, recent government efforts to curtail IPR abuse have yielded some results. A number of high profile actions have been taken against IPR violators. The Nigerian Police, working closely with the Nigerian Copyright Commission (NCC), has occasionally raided enterprises allegedly producing and selling pirated software and videos. However, most raids appear to be conducted against small pirates, not large and well-connected ones. Moreover, very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted, and most cases have been settled out of court, if any final resolution occurs at all.

Nigeria's broadcast regulations do not permit re-broadcasting or excerpting foreign programs unless the station has an affiliate relationship with the foreign broadcaster. This regulation is generally respected. Some cable providers do illicitly transmit foreign programs, however. The National Broadcasting Commission (NBC) monitors the industry and is responsible for punishing infractions.

IPR problems in Nigeria's film industry worsened dramatically following the government's 1981 nationalization of the country's filmmaking and distribution enterprises, part of its campaign to "indigenize" the economy. The legitimate film distribution market has yet to recover. Almost no feature films have been distributed in the country in two decades, and the widespread pirating of foreign and domestic videos appears to have discouraged the entry of licensed distributors in this medium as well.

SERVICES BARRIERS

Foreign participation in the services sectors is generally not restricted, and regulations provide 100 percent access to service sectors including banking, insurance, and securities. Central Bank of Nigeria (CBN) directives stipulate minimum levels of paid-in capital. At least two foreign banks have initiated operations in Nigeria in recent years and other Nigerian banks have received infusions of foreign capital. Professional bodies in engineering, accounting, medicine and law define the minimum personal qualifications required for participation. Nigeria does not impose limits on expatriate employment, except in the oil and gas sector.

INVESTMENT BARRIERS

Under the Nigerian Investment Promotion Commission (NIPC) Decree of 1995, Nigeria allows 100 percent foreign ownership of firms outside the petroleum sector. Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except firms on a "negative list" (for example, manufacturers of firearms and ammunition and military and paramilitary apparel). Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The decree abolished the expatriate quota system, except in the oil sector, and prohibits nationalization or expropriation of a foreign enterprise by the Nigerian government except for cases determined to be in the national interest.

Despite extensive government efforts led by NIPC to improve the country's investment climate, disincentives to investing in Nigeria continue to plague foreign entrepreneurs. Among the hurdles to overcome: high business taxes, confusing land ownership laws, activist labor unions, arbitrary application of regulations, corruption and extensive crime. There is not a tradition supporting the sanctity of contracts, and the court system for settling commercial disputes is weak, and some believe biased. Local content restrictions are encroaching upon the oil sector; foreign oil companies are under pressure to increase procurement from indigenous firms.

Government efforts to eliminate financial crime such as money laundering and advance-fee fraud (or "419 fraud" after the relevant section of the Nigerian Criminal Code) have grown in recent years but are largely ineffective. Meanwhile, fraud, theft, and extortion are endemic. With the help of U.S. law enforcement agencies, "419" perpetrators are being prosecuted by the government.

International watchdog groups routinely rank Nigeria among the most corrupt countries in the world. Yet, Nigeria is now beginning to show signs of reversing decades of corruption and economic neglect. In general, U.S. investors remain cautious about conducting business in Nigeria. The sale of U.S. goods and services to either public or private sector enterprises is not restricted. However, anti-competitive behavior throughout the Nigerian economy is endemic, affecting U.S. products and services. The export of U.S.

goods and commodities to Nigeria also suffers from unfair trade practices by foreign competitors who are often willing to accommodate Nigerian requests for improper documentation and payments. Some U.S. exporters believe sales are lost when they refuse to engage in illicit or corrupt behavior. Other U.S. businesses with extensive experience in Nigeria believe that strict adherence to U.S. Foreign Corrupt Practices Act (FCPA) standards is understood by their Nigerian business counterparts and ultimately helps these U.S. companies minimize their exposure to corruption.

ELECTRONIC COMMERCE

The growth of electronic commerce and telecommunications in Nigeria, albeit from a low base, offers opportunities for the provision of U.S. products and services. While there are no trade restrictions that discriminate against U.S. products, high technology industries suffer from the same constraints noted for more traditional industries.

ANDREWS